

Rule 34. Admit/Deny Hearing**34.01 Generally**

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 35.

34.02 Timing**Subdivision 1. Child in Placement.**

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 30.

(b) **Termination of Parental Rights Matters.** Except as otherwise provided in this paragraph, in a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party. In a termination of parental rights matter that bypasses the child in need of protection or services proceeding, the admit/deny hearing shall be held within ten (10) days of the filing of the petition.

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held not less than ten (10) days after service of the summons and petition is complete upon the party.

(d) Indian Child Welfare Act Matters.

(1) **Parent's, Indian Custodian's, or Tribe's Identity Known.** In matters governed by the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., the admit/deny hearing on a petition requesting the foster care placement of an Indian child, the permanent placement of an Indian child, or the termination of parental rights to an Indian child shall not be held until at least ten (10) days after receipt of the notice required under Rule 32.06, 25 U.S.C. section 1912(a), and Minnesota Statutes, section 260.761, subdivision 3. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

(2) **Parent's, Indian Custodian's, or Tribe's Identity Unknown.** If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice required under Rule 32.06, 25 U.S.C. section 1912(a), and Minnesota Statutes, section 260.761, subdivision 3, shall be sent to the Secretary of the Interior who shall have fifteen (15) days to provide the requisite notice to the parent or Indian custodian and the tribe. The admit/deny hearing shall be held at least twenty-five (25) days after receipt of the notice by the Secretary. The parent, Indian custodian, or tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for the admit/deny hearing.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the filing of the petition.

(b) **Child's Behavior.** In matters where the sole allegation is that the child's behavior is the basis for the petition and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service of the summons and petition upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

34.03 Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing the court shall on the record:

(a) verify the child's name, date of birth, race, gender, current address unless stating the address would endanger the child or seriously risk disruption of the current placement, and, if the child is believed to be an Indian child, the name of the child's tribe;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe, parent, and Indian custodian have been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 25;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation;

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, sections 260C.503 to 260C.521;

(i) if the admit/deny hearing is the first hearing in the juvenile protection matter, and if the court knows or has reason to know that the child is an Indian child, determine whether notice has been sent pursuant to Rule 32.06; 25 U.S.C. section 1912(a); and Minnesota Statutes, section 260.761, subdivision 3;

(j) if the admit/deny hearing is not the first hearing and the determination that the child is an Indian child has not been made as required in Rule 30.08, subdivision 2, attempt to determine whether the child is an Indian child through review of the petition, other documents, and an on-the-record inquiry. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child;

(k) if the district court finds from review of the petition or other information that an Indian child is a ward of tribal court, pursuant to Rule 48.02, subdivision 1, adjourn the hearing to consult with the tribal court regarding the safe and expeditious return of the child to the jurisdiction of the tribe and dismiss the juvenile protection matter; and

(l) attempt to determine the applicability of the Indian Child Welfare Act, 25 U.S.C. section 1901 et seq., based on the information received from the tribe or tribes required to receive notice

pursuant to 25 U.S.C. section 1912(a). The court shall order the petitioner to make further inquiry of the tribe or tribes until the court can determine whether the Indian Child Welfare Act applies.

Subd. 2. Child in Need of Protection or Services Matters.

(a) In each child in need of protection or services matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter, unless the prima facie determination was made at the emergency protective care hearing pursuant to Rule 30.08. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home:

(1) a permanency progress review hearing shall be held within six (6) months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent; and

(2) a permanent placement determination hearing shall be held within twelve (12) months of the date of the child's placement in foster care or in the home of a noncustodial or nonresident parent.

Subd. 3. Termination of Parental Rights Matters.

(a) In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1, the court shall determine whether the petition states a prima facie case in support of one or more statutory grounds set forth in the petition to terminate parental rights and a prima facie showing that a juvenile protection matter exists and that the child is the subject of the matter. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) When the petition alleges that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations contained in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts, to reunify the child and the parent or legal custodian were not required under Minnesota Statutes, section 260.012.

(c) If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(i) return the child to the care of the parent or legal custodian;

(ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(iii) give the petitioner ten (10) days to file a child in need of protection or services petition; or

(iv) dismiss the petition.

Subd. 4. Permanent Placement Matters.

(a) In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options.

(b) When the petition seeking permanent placement of the child away from the parent or legal custodian requires a determination by the court that reasonable efforts, or active efforts in the case of an Indian child, have been made to reunify the child with the parent or legal custodian, the court shall enter a separate finding regarding whether the factual allegations in the petition state a prima facie case that the agency has provided reasonable efforts, or active efforts in the case of an Indian child, to reunify the child and the parent or legal custodian. In the alternative, the court may enter a finding that reasonable efforts were not required under Minnesota Statutes, section 260.012.

(c) If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 35. If the court determines that the petition fails to state a prima facie case, the court may:

- (i) return the child to the care of the parent;
- (ii) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or
- (iii) dismiss the petition.

Subd. 5. Motions. The court shall hear any motions, made pursuant to Rule 15, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

1999 Advisory Committee Comment (amended 2003, 2008, and 2014)

Rule 34.03, subdivision 2, is consistent with Minnesota Statutes, section 260C.204, which provides that a permanency progress review hearing must be held within six (6) months of a child's removal from the home. The requirements of Rule 34.03, subdivisions 3 and 4, are consistent with federal requirements regarding the timing of reasonable efforts determinations and permanency hearings.

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required Under ICWA. For a juvenile protection matter involving an Indian child, the Indian Child Welfare Act (ICWA), 25 U.S.C. section 1912(a); Minnesota Statutes, section 260.761, subdivision 3; and Rule 32.06 require that notice of the proceeding and of the right to intervene in the proceeding shall be given by registered mail with return receipt requested to the Indian child's parent or Indian custodian and the Indian child's tribe by the person seeking foster care placement or termination of parental rights. Minnesota Statutes, section 260.761, subdivision 2, also requires notice to the Indian child's tribe whenever the agency's involvement with the Indian child could lead to out-of-home placement and requires agency involvement longer than thirty (30) days. This requirement supports the practice of early involvement of the child's Indian tribe in planning for the child's safety and services for the family.

Timing of ICWA Notice. The ICWA, 25 U.S.C. section 1912(a), provides that no foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the Indian child's parent or Indian custodian and the Indian child's tribe, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days from receipt of the notice to prepare for such proceeding.

Emergency Protective Care Placement Pending ICWA Notice. See 2008 Advisory Committee Comment to Rule 30.10.

2014 Advisory Committee Comment

With respect to subdivision 1(j) and (l), in cases where the application of the Indian Child Welfare Act (ICWA) is unclear, such as when it is not yet known whether the child is or is not an Indian child, it is advisable to proceed pursuant to the requirements of the ICWA unless or until a determination is otherwise made in order to fulfill the Congressional purposes of the ICWA, to ensure that the child's Indian tribe is involved, and to avoid invalidation of the action pursuant to 25 U.S.C. section 1914 and Rule 46.03.